

HUD Revised Model Leases Questions and Answers

1. **Question:** Are the revised model leases currently provided for information purposes only pending the release of the new HUD Handbook 4350.3?

Answer: No. The revisions to the model leases are effective immediately.

2. **Question:** When must the Owner execute the revised model lease for existing tenants that are on a month-to-month lease?

Answer: The Owner must execute the appropriate lease addendum for tenants that are on a month-to-month lease by no later than the time of the next scheduled annual recertification and no sooner than the 60-day notice requirement.

3. **Question:** When must the Owner execute the revised model lease for existing tenants that are not on a month-to-month lease?

Answer: The Owner must execute the revised model lease for tenants that are not on a month-to-month lease by no later than the time of the next scheduled annual recertification and no sooner than the 60-day notice requirement.

4. **Question:** What is the 60-day notice requirement?

Answer: The 60-day notice requirement requires Owners before implementing lease changes to send the tenant the approved modification at least 60 days before the proposed effective date. Owners must include a letter stating the tenant can accept the modification or move, but that a response is due within 30 days.

The 60-day notice requirement is discussed in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, Chapter 4, paragraph 4-6.b.(2).

5. **Question:** Should the Owner send the revised leases transmitted in Change 30 of 4350.3 to the local HUD office or Contract Administrator prior to implementing?

Answer: No. The revisions to the model leases are mandated by HUD. No further approval from the local HUD office or the Contract Administrator is necessary.

6. **Question:** What happens in the case where the Owner has a lease that differs from the HUD approved lease?

Answer: Owners are required to use a HUD-approved lease.

7. **Question:** How much can the Owner alter the HUD-approved lease?

Answer: Owners with HUD approval, may edit certain provisions of the model lease in accordance with paragraph 4-2 of Handbook 4350.3 and to bring it into compliance with State and local laws or in compliance with local property management practices for the market area. Owners must use a lease form that meets HUD regulations and the rules in Handbook 4350.3.

8. **Question:** The HUD Handbook 4350.3 and the model lease do not handle 202 security deposits the same. The HUD Handbook 4350.3 states that for Rent Supplement, RAP, Section 202/8 units and other Section 8 units not covered by paragraph b(2) above, the security deposit may not exceed the greater of \$50 or the monthly total tenant payment. Whereas the 202 model lease states that: A security deposit equal to one month's total tenant payment or \$50, whichever is greater, shall be required at the time of execution of the Agreement.

What is the correct interpretation for handling 202 security deposits?

Answer: The new provision is consistent with the handbook and it brings the model lease into conformance with the regulations. The 811 PRAC regulation at 891.435(a) states that "...the Owner will require each household occupying an assisted unit or residential space in a group home to pay a security

deposit..." 891.635 for 202's and 891.775 refer back to 891.435 for the same requirement.

9. **Question:** Is the lead paint literature required for senior housing?

Answer: The lead paint literature is not required under the Section 202 Supportive Housing for the Elderly Program.

10. **Question:** The leases for the Section 202/8 (appendix 19c), 202 PRAC (appendix 19d) and 811 PRAC (appendix 19e) have a new paragraph 24 that involves interim recertifications, specifically dealing with reporting a change in income that exceeds \$40 a month. Currently, this is not a Handbook requirement for these programs.

Should the new leases be implemented now even though the handbook language differs?

Answer: Yes. This provision brings the model lease into compliance with the regulations requiring interim recertifications at 891.410(g)(2), 891.610(g)(2), and 891.750(g)(2). This requirement will also be included in the revised Handbook 4350.3.

11. **Question:** Section 5 of the model lease for Subsidized Programs describes late charges and states: thereafter, the Landlord may collect \$1 for each additional day the rent remains unpaid during the month it is due. Were any changes made to section 5 of the subsidized program model lease?

Answer: There were no changes to the portion of the model lease regarding the late charges.

12. **Question:** Paragraph 12 of the lease makes a blanket statement that the Landlord agrees to provide a reasonable accommodation to an otherwise eligible tenant's disability. However, the Landlord is only obligated to do so under law if there is an actual need that ties the request to the disability.

Should this section be amended to read upon written request with documentation supporting the existence of a disability and the need of the accommodation

necessary, the Landlord agrees to provide reasonable accommodation...?

Answer: At the request of and based upon the Counsel of FHEO, an individual with a disability does not have to put the housing provider on notice in the form of a written request for reasonable accommodation. An accommodation is not "reasonable" if it is not needed by a person with a disability. A reasonable accommodation is provided to make it possible for a person with a disability to make more effective use of their housing.

13. **Question:** Should paragraph 13(d) likewise be changed to add "with written documentation?"

Answer: HUD agrees that a landlord may verify the existence of a disability, and the need for the requested accommodation. However, there may be some circumstances where the disability is so obvious and the need for the accommodation is obvious, that requiring written third party documentation may be unnecessary. For example, if a double amputee who uses a wheelchair requests a ramp to his door so that he can get into his/her unit, there should be no need for formal documentation of the disability and the need for the accommodation. It may be sufficient for the individual to self-document under these circumstances.

14. **Question:** Should the language in paragraph 23, last paragraph have a change in section (3) to read "failure of tenant to timely, and accurately, supply all required information on the income...?"

Answer: The lease contains sufficient language in paragraph 25, which provides penalties to tenants for knowingly submitting false information to the landlord regarding income or other factors to consider in determining the tenants eligibility and rent.

15. **Question:** Why has HUD refused to include all staff, rather than just onsite staff when discussing an eviction of a person who threatens the health, safety, or right to peaceful enjoyment of the premises? See paragraph 23. (6) (a).

Answer: The HUD model lease includes a provision that allows for eviction of a person who adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities. This provision of the lease would cover management staff. (See paragraph 23.d. in appendix 19a)

16. **Question:** Paragraph 30 deals with the tenant's rights to organize. The industry has nothing against tenant organizations, and HUD understands this. However, tenant organizers should be invited. Should the wording in paragraph 30 be changed to the Landlord agrees to allow tenant and tenant invited organizers to lawfully and reasonably conduct on the property...?

Answer: The Department made a commitment to the tenant advocacy community to support the regulations at 24 CFR Part 245. The regulations provide extensive guidance on the rights and responsibilities of tenant organizers and organizations.

17. **Question:** Paragraph 32 states the lease will automatically terminate if the Section 8 contract terminates for any reason. What happens to tenants under Section 236 and Section 221(d)3 programs if the lease is terminated in the event HUD does not renew the Section 8 contract? Is HUD saying those tenants not under a Section 8 contract will have a lease that terminates if the HAP is not renewed?

Answer: Owners may modify the contract to exclude the early termination language for non-assisted tenants.

18. **Question:** Why are late fees not provided in the 202 and PRAC leases?

Answer: A policy decision was made when the original 202 lease was developed for 202/8 projects not to have a late fee and subsequent revisions have been limited to statutory and regulatory changes. The Department feels that elderly and disabled people may have more difficulty than others in making rent payments and omission of a late payment penalty seems a perfectly reasonable accommodation.

19. Question: Why do the leases not provide for an eviction for sex offenders residing on the property under the termination of tenancy provision?

Answer: The regulations and the statute only address the prohibition of sex offenders for admission.

20. Question: Will HUD be providing some relief to Owners for the costs associated the conducting background checks for applicant screening, lease enforcement or eviction purposes? Owners are paying about \$20 per adult member.

Answer: This is an eligible project expense and may be included in the project's budget. No further relief will be granted.